

2/6/23

STATE OF SOUTH CAROLINA

(Caption of Case)

Happy Rabbit, LP on behalf of Windridge  
Townhomes,  
Complainant,

v.

Alpine Utilities, Inc.,  
Defendant.

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

Address: Post Office Box 8416

Columbia, SC 29202

SC Bar Number: 68269

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Other:

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

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TRACEY C. GREEN  
ALAN WILSON  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TX

April 28, 2009

**VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RECEIVED  
2009 APR 28 11:12:13  
PUBLIC SERVICE  
COMMISSION

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;  
Docket No. 2008-360-S

Dear Mr. Terreni:

I am writing on behalf of Alpine Utilities, Inc. ("Alpine") in response to Happy Rabbit, LP's ("Happy Rabbit") Petition for Clarification/Alternative Relief filed with the Public Service Commission of South Carolina ("Commission") on April 22, 2009. Therein, Happy Rabbit requests that the Commission Order in this matter "declare that all discovery and pleadings filed to date by both parties, of every type and kind, is preserved for use when the Docket is reactivated. Further, Happy Rabbit requests that the "Commission's dismissal without prejudice would continue the protection for Complainants of R. 103-538 (B) ... while the parties are litigating in Circuit Court." Happy Rabbit states that if the Commission issues such an Order, Complainants "commit to neither seek reconsideration, nor appeal the Order of this Commission."

With respect to Happy Rabbit's request as to preserving Discovery and pleadings filed by the parties to date, Alpine notes that the Commission indicated in its directive that "resolution of [the circuit court] case could resolve the matters in dispute between the parties" and that "if necessary, the Commission would subsequently entertain any request for the filing of new pleadings regarding any unresolved issues for which it is claimed to have jurisdiction." Commission Directive dated April 22, 2009. Therefore, it appears clear that the Commission has disposed of the Complaint filed in this matter and that any future action will be limited to those matters which are not addressed by the circuit court. However, Alpine would consent to preservation of the discovery and pleadings filed in this matter to date to the extent that such

(Continued . . .)

filings are relevant to any future action before the Commission on this matter, and subject to Alpine's outstanding dispositive motions and any objection heretofore raised by Alpine.

With respect to continuing the protection of R. 103-538 (B), Alpine cannot consent to this request. As the Commission is well aware, the circuit court proceeding was filed on September 18, 2008 – over seven months ago. Shortly thereafter, Happy Rabbit filed a parallel proceeding with the Commission in the above-referenced docket and has withheld payment ever since. Alpine has continued to provide sewer service to the property in accordance with Commission regulations and Happy Rabbit has a current past due balance of \$7,663.61 for sewer services rendered.

Alpine initially states that Happy Rabbit's request is not founded in statute, regulation, or other provision of law. The relief afforded by R. 103-538 (B) is only applicable during the pendency of a complaint before the Commission. The Commission has appropriately ruled that the instant complaint should be dismissed while the circuit court proceeding is pending and that any future proceeding will only address any **unresolved** issues for which it is claimed to have jurisdiction. Additionally, such relief, if allowed, would necessitate Alpine's continued provision of services without compensation which would result in an unconstitutional taking. Therefore, Alpine asserts that it is inappropriate for Happy Rabbit to attempt to negotiate the requested relief, which is not permitted by law, by committing "to neither seek reconsideration nor appeal the Order of this Commission."

Even if the Commission is inclined to grant Happy Rabbit's alternative request that the Commission hold this matter in abeyance pending the outcome of the litigation in circuit court, Alpine submits that such relief is unwarranted, unreasonable and would work an undue hardship on Alpine. The parties to the circuit court proceeding have filed various procedural motions and, in the seven months since that matter began, no hearing has been held or scheduled on those requests much less any date established for a hearing on the merits. Additionally, on April 24, 2009, Alpine was served with a motion filed by Happy Rabbit seeking class certification of the circuit court proceeding. If Happy Rabbit is successful in that regard, the resulting proceeding could take a significant period of time, likely well exceeding a year, until a decision is rendered in that matter. Alpine believes it would be unjust to require it to continue to provide sewer services without compensation for such an extended and undefined period of time. This is especially so considering the instant Complaint was dismissed and any future proceedings before the Commission will only address any unresolved issues for which it is claimed to have jurisdiction.

Thank you for your consideration of this matter. If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**

A handwritten signature in black ink, appearing to read 'Benjamin P. Mustian', with a long horizontal flourish extending to the right.

Benjamin P. Mustian

BPM/cf  
Enclosures

cc: Nanette S. Edwards, Esquire  
Richard L. Whitt, Esquire

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2008-360-S**

RECEIVED  
2009 APR 28  
PUBLIC SERVICE  
COMMISSION

Happy Rabbit, LP on behalf of Windridge, )  
Townhomes, )  
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v. )  
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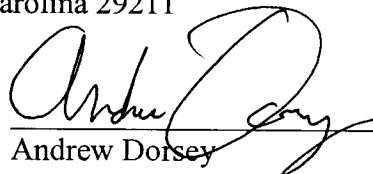
**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Alpine Utilities Inc.'s April 28, 2009 Letter** via hand delivery to the address below:

Richard L. Whitt, Esquire  
**Austin & Rogers, P.A.**  
508 Hampton Street, Suite 300  
Columbia, SC 29211

I further certify that I have caused to be served one (1) copy of the above-referenced document by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

  
\_\_\_\_\_  
Andrew Dorsey

Columbia, South Carolina  
This 28<sup>th</sup> day of April, 2009.